

# STATE OF GEORGIA DEPARTMENT OF BANKING AND FINANCE



<i>BULLETIN...</i>	<i>BULLETIN...</i>	<i>BULLETIN...</i>	<i>BULLETIN...</i>	<i>BULLETIN...</i>
--------------------	--------------------	--------------------	--------------------	--------------------

*SONNY PERDUE*  
*GOVERNOR*

*ROB BRASWELL*  
*COMMISSIONER*

*SPECIAL EDITION*  
*IMPORTANT NOTICE*  
*PROPOSED RULEMAKING*

July 13, 2009

**NOTICE OF PROPOSED RULEMAKING  
AND  
OPPORTUNITY TO COMMENT**

**PROPOSED AMENDMENT TO RULES AND REGULATIONS  
OF  
DEPARTMENT OF BANKING AND FINANCE  
STATE OF GEORGIA**

To all interested persons:

Pursuant to the provisions of the Georgia Administrative Procedures Act, Official Code of Georgia Annotated (O.C.G.A.) Chapter 50-13 and by authority of O.C.G.A. § 7-1-61, O.C.G.A. § 7-1-663; O.C.G.A. § 7-1-1012, and other cited statutes, the Georgia Department of Banking and Finance hereby gives notice of its intent to adopt new and amended rules.

The enclosed proposed changes are in part responsive to law changes in the 2009 Legislation.

A synopsis and purpose precedes each proposed rule, with background information and explanation where applicable.

Comments to the Department of Banking and Finance must be received by Thursday, August 13, 2009, at the close of business. Please send all comments to:

Rob Braswell, Commissioner  
Georgia Department of Banking and Finance  
2990 Brandywine Road, Suite 200  
Atlanta, GA 30341-5565

Fax: (770) 986-1654 or 1655

The Department shall review all comments, may contact commenters to discuss their suggestions, and after the comment period has closed will prepare the final rules. The Department will consider the proposed new rules for adoption at a meeting at 9:30 a.m. on Monday, August 17, 2009, at the offices of the Department of Banking and Finance at Suite 200, 2990 Brandywine Road, Atlanta, Georgia 30341. Notice and a copy of the final rules adopted will be e-mailed to persons who have made a special request, and will be made available on our website at <http://dbf.georgia.gov/>. Other interested parties may receive a copy of the final rule by contacting the Department at (770) 986-1633, after Monday, August 17, 2009.

## **2009 Rules and Regulations**

### **Proposed Changes: Synopsis, Purpose and Background**

#### **80-1-5-.01 Loans Generally, Interpretations and Ruling**

During the legislative session, an amendment was made to language in O.C.G.A. § 7-1-285(b) that provides “in estimating the legal lending limit for any individual person, loans to related corporations, partnerships and other entities will be combined subject to rules established by the department.”

Language has been deleted from this Rule which deals with legal lending limits.

#### **80-1-5-.11 Combination of Debt for Legal Lending Limit Purposes**

This Rule has been added to provide the general rule for legal lending limit purposes. It defines direct benefit and common enterprise and how loans will be combined for lending limit calculations. This Rule provides greater consistency between state and national bank methodology for calculating legal lending limits and combination rules.

#### **80-3-1-.02 Check Cashers.**

A provision was deleted which required that all candidates for employment be provided a copy of the subsection by the licensee or registrant. Additionally, clarifying language was added which provides that mobile check cashing facilities must comply with licensure requirements at each location at which business is conducted.

#### **80-3-1-.03 Money Service Businesses: Compliance with Federal Requirements.**

A website address change has been made to this Rule.

#### **80-5-1-.02 License, Registration and Supervision Fees for Check Cashers and Sellers, Money Transmitters, Representative Offices and Mortgage Lenders and Brokers; Due Dates.**

A change was made to this Rule providing a twenty dollar (\$20) fee for each approved branch office for brokers and lenders located in Georgia due at initial application and each subsequent renewal period.

Language was added to this Rule providing the initial and renewal application and license fees for mortgage loan originators. As set forth in recent federal and state legislation, mortgage loan originators will be licensed on an annual basis. The initial licensure period will be January 4, 2010 to March 31, 2010, subject to change at the discretion of the Department, should that become necessary due to practical implementation issues surrounding the issuance of this new class of license, thereafter, the licensure period shall be on an calendar year basis.

#### **80-5-1-.07 License Renewal Periods and Requirements for Mortgage Brokers, and Mortgage and Lenders.**

Language has been deleted from this Rule addressing the transition of mortgage brokers and mortgage lenders to the Nationwide Mortgage Licensing System and Registry (NMLSR) as this transition period has expired.

A reference to a license late fee has been removed from this Rule as late fees for each license or registration type is set forth elsewhere in the rules.

#### **80-11-1-.02 Advertising Requirements.**

Provisions in the federal SAFE Mortgage Licensing Act of 2008 (SAFE Act), which were incorporated into state law by the Georgia General Assembly, requires that solicitations and advertisements include a licensee's valid unique identifier. Those requirements have been inserted into this Rule.

#### **80-11-1-.04 Branch Managers.**

Language has been deleted from this Rule which requires the licensee to conduct a criminal background check on each branch manager and send that report to the Department. The Rule will now require the applicant to submit fingerprints along with an appropriate fee to the Department in order for the Department to conduct the required background check.

#### **80-11-1-.05 Employee Background Checks; Covered Employees.**

References to Georgia Code sections have been corrected in this Rule.

#### **80-11-2-.01 Location Requirement and Minimum Retention Period.**

A change was made to this Rule to clarify that it pertains to mortgage broker and mortgage lender licensees or registrants only.

#### **80-11-2-.02 Minimum Requirements for Books and Records.**

A change was made to this Rule to clarify that it pertains to mortgage broker and mortgage lender licensees or registrants only.

#### **80-11-2-.03 Mortgage Loan Transaction Journal.**

As required by the SAFE Act, a provision has been added to require that the NMLSR unique identifier of the loan officer appear on the application. Language was added that will require that the mortgage loan transaction journal include the NMLSR unique identifier of the mortgage broker or lender for whom the processing was performed and the name and the NMLSR unique identifier of the mortgage loan originator.

Additionally, a change was made to this Rule to only require the last four digits of the proposed borrower and co-borrower's social security numbers instead of complete nine digit social security numbers.

#### **80-11-2-.04 Mortgage Loan Files.**

As required by the SAFE Act, a provision was added to require that the signed mortgage loan application with the NMLSR unique identifier of the mortgage loan originator be maintained if received.

#### **80-11-3-.01 Administrative Fines.**

Changes were made to this Rule, where appropriate, to clarify that the provisions are applicable to mortgage brokers and mortgage lenders, rather than all licensees which now include mortgage loan originators. Any provision that appears in these Rules that is applicable to all licensees will also apply to the class of mortgage loan originators licensees.

#### **80-11-4-.01 Initial Experience and Education Requirements; Continuing Education.**

Language has been added to clarify education requirements for those mortgage brokers that are also required to have a mortgage loan originator license and for those mortgage brokers that are not required to obtain a mortgage loan originator license.

A change was made to the dates for acceptance of continuing education hours by the Department, which shall now be between November 1 and December 31 of each year. Continuing education hours have been reduced from 12 to 8 hours.

#### **80-11-4-.02 Approved Schools.**

A statutory reference has been added to this Rule. O.C.G.A. § 7-1-1003.7 was enacted by the Georgia General Assembly during the most recent legislative session.

#### **80-11-4-.03 Licensing requirements; registrants; exemptions; term for bond.**

A requirement that mortgage broker/lender bonds be for a stated term of one year and expire on June 30 has been deleted. Language has been inserted which sets the bond term for a minimum of 12 months from the date of issuance, or such longer period of time as needed to reflect the term of the bond. Clarification is also included that notice of proposed bond cancellation is required no later than 30 days prior to the expiration or cancellation date of said bond.

#### **80-11-4-.05 Knowing Purchase, Sale or Transfer of Loan or Loan Application from Unlicensed Entity.**

Mortgage loan originators have been added to this Rule. A change has also been made to this Rule to reflect that the Department's website is updated nightly with the exception of weekends and holidays.

#### **80-11-4-.06 Wholly Owned Subsidiaries of Lenders; Notification Statement; When Registration Required.**

Legislation was enacted which deleted the ‘notificant’ classification, thereby making this Rule obsolete.

#### **80-11-4-.09 Challenges to Information Entered into the Nationwide Mortgage Licensing System and Registry.**

This Rule has been added to provide a mechanism for mortgage brokers and lenders to challenge information entered into the NMLSR by the Department.

#### **80-11-5-.01 Mortgage Loan Originator Licensure Requirements.**

Chapter 80-11-5 entitled “Mortgage Loan Originator Licensure and Other Requirements” has been added to the Department’s Rules.

Rule 80-11-5-.01 reflects SAFE Act statutory requirements for mortgage loan originators and sets out surety bond requirements.

#### **80-11-5-.02 Books and Records Requirements; Examinations**

This new Rule sets out the requirements for mortgage loan originators with regard to records that he or she must create and maintain.

#### **80-11-5-.03 Licensed Location.**

Mortgage loan originators must maintain an office of record with the Department.

#### **80-11-5-.04 Renewals**

Mortgage loan originator licenses shall expire on December 31<sup>st</sup> of each year. This new Rule provides requirements in order for a mortgage loan originator to renew that license, including continuing education requirements.

#### **80-11-5-.05 Administrative Fines.**

This new Rule sets out the nature and amount of administrative fines applicable to mortgage loan originators.

#### **80-11-5-.06 Administrative Actions; Nationwide Mortgage Licensing System and Registry Information Challenges.**

This Rule has been added to provide a mechanism for mortgage loan originators to challenge information entered into the NMLSR by the Department.

## ***PROPOSED RULES***

### **80-1-5-.01 Loans Generally, Interpretations and Rulings.**

(1) "Indirect" loans as used in Code Section 7-1-285 shall mean loans made for the substantial benefit of a third party where repayment of the loan is dependent on activities of the third party rather than solely dependent on the resources of the borrower and subject to the provisions of Rule 80-1-5-.11.

(2) Loans extended to any Industrial Development Authority domiciled in Georgia which are dependent upon revenues obtained under an assigned lease contract naming the Authority as lessor shall be considered as loans to the lessee in calculating legal loan limitations.

(3) Loans by a bank to any wholly-owned subsidiary of the bank, which subsidiary is located within an approved office of the bank and which has agreed to abide by all laws, rules and regulations applicable to the bank shall be exempt from the twenty-five (25) percent maximum lending limit of the bank. In addition, to the extent allowed by other applicable law and with the prior written approval of the Department, this exemption from the twenty-five (25) percent maximum lending limit may be extended to loans from a bank to a wholly owned subsidiary of an affiliated bank.

(4) In determining amounts loaned, all amounts guaranteed or insured by any instrumentality of the United States government shall be deducted to the extent of the guaranty or insurance coverage. Immediate and deferred participations on loans by an instrumentality of the United States government shall also be excluded. Where the source of repayment of a loan, i.e. lease payments, is guaranteed by an instrumentality of the United States government and such guarantee is assignable and has been assigned to the bank, such loan may be excluded to the extent of the guarantee.

(5) In determining whether or not a loan in excess of the fifteen (15) percent limitation is secured by "good collateral and other ample security," the lack of a perfected lien, inadequate insurance, required margins between collateral value and the amount of the loan shall be prima facie evidence of inadequate security to the debt. Loans secured by endorsement must be supported by a financial statement on the endorser, properly signed, which is not more than eighteen months old, if the loan is to be considered secured, and such statement must reflect adequate income to service the loan and unencumbered equity sufficient to protect the loan.

(6) A borrower's deposit accounts in the lending bank will be regarded as collateral to a loan when they are not subject to check or withdrawal, mature on or after the loan which is secured, are under the sole control of the bank, and are properly assigned. Where, according to the terms of the deposit contract, the deposit is eligible for withdrawal before the secured loan matures, the bank must establish internal procedures to prevent release of the security without the lending bank's prior consent. If proper procedures are in place, such deposits will be considered as collateral. Where deposit balances are properly taken as collateral to a loan, the loan may be reduced to the extent of the deposit in determining the amounts loaned for either secured or unsecured legal lending limitations, as applicable.

(7) Except as provided in this paragraph, extensions of credit in the form of insufficient funds checks held beyond the permissible return date and overdrafts shall be considered "extensions of credit" included in determining compliance with the legal limitation as it applies to the maker of the check or owner of the overdraft. Such extensions of credit shall also be subject to the requirements for prior written approval and ample collateral where the total indebtedness of the borrower exceeds fifteen (15) percent of the statutory capital base. Such extensions of credit will not be considered extensions of credit for purposes of compliance with the above legal loan limitations and requirements, provided that the extension is inadvertent, which requires that:

(a) The extension(s) do not exceed the aggregate amount of \$1,000 at any one time; and

(b) The account is not overdrawn or the insufficient funds check held for more than five (5) business days.

(8) Wherever approval of the Board of Directors or Loan Committee is required, such approval must be specific, prior, written approval of each extension of credit, except that advances made under a master note covering a specific purpose or project need not receive specific approval where such approval was accorded the master note. Annual approval of a line of credit may be used where interest rate, repayment terms, and anticipated collateral are clearly identified and current credit information is on file. Commodity, floor-plan and discount lines of credit which are anticipated to exceed fifteen (15) percent of the statutory capital base may be approved annually to be deemed appropriate by the Board of Directors without each transaction receiving specific prior approval. When in excess of twenty-five (25) percent of the statutory capital base, the line must be reviewed quarterly by the Board of Directors or Loan Committee.

(9) In determining the primary collateral basis upon which a loan is granted, that portion of the collateral having the greatest market value shall be assumed to be the primary collateral and the credit worthiness of the individual and of endorsers shall not be considered in determining conformity with the law unless proper, current, financial information is in file on the borrower or endorser.

(10) In determining amounts loaned to "any person, firm or corporation," amounts acquired as a result of purchasing accounts receivable from a third party (factoring) shall not be considered; provided, the aggregate debt of the obligor including factored accounts shall not exceed thirty-five (35) percent of the bank's statutory capital base.

(11) Extensions of credit to political subdivisions of the State of Georgia authorized to levy taxes or backed by the taxing authority of another political subdivision shall qualify for exemption from the twenty-five (25) percent loan limitation under the provisions of Code Section 7-1-285, subparagraph (c)(4)(B), only where such extension of credit otherwise conforms with the provisions of Georgia Constitution, Article 9, Section 5.

(12) Where the "statutory capital base" as defined in Section 7-1-4(35) is reduced by operating losses, loan losses, or for other reasons, existing debt which was in conformity with the legal limitations at the time it originated shall not be construed to be non-conforming with new



legal limitations resulting from the reduced statutory capital base; provided, however, in the absence of agreements to the contrary and originating at the time such debt originated regarding repayment programs for the debt in question, any extension, renewal, rollover or the like of the existing debt shall be considered to be a new loan and must conform to the new, lower lending limitations. Demand notes in excess of resultant lower lending limitations or included in aggregate debts in excess of such limitations must be called for maturity within six (6) months after it has been determined that the new lending limits are applicable; provided, such notes may be wholly or partially renewed on a demand basis or otherwise where the aggregate debt of the borrower conforms to the new lending limits.

~~(13) The Department of Banking and Finance shall consider the liabilities of separate persons, corporations and entities to be combined for lending limit purposes, when there is no evidence of a separate source of repayment, there is an apparent lack of ability to service the obligation from the operations of the separate person or corporation without relying on a related source of repayment, or where the separate entities make common use or are dependent upon funds of the group. "Related" shall mean connected by corporate or business structure or by common use or dependence upon funds, facilities or personnel.~~

Authority Ga. L. 1974, pp. 733, 790-797; Ga. L. 1983, Act No. 255, effective March 16, 1983.

#### **80-1-5-.11 Combination of Debt for Legal Lending Limit Purposes**

(a) General Rule. Pursuant to Code Section 7-1-285, loans or extensions of credit to one borrower will be attributed to another person and each person will be deemed a borrower:

(1) When proceeds of a loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used; or

(2) When a common enterprise is deemed to exist between the persons.

(b) Direct Benefit. The proceeds of a loan or extension of credit to a borrower will be deemed to be used for the direct benefit of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(c) Common enterprise. A common enterprise will be deemed to exist and loans to separate borrowers will be aggregated:

(1) When the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer will not be treated as a source of repayment under this paragraph because of wages and salaries paid to an employee, unless the standards of paragraph (c)(2) of this section are met;

(2) When loans or extension of credit are made:

(i) To borrowers who are related directly or indirectly through common control, including where one borrower is directly or indirectly controlled by another borrower; and

(ii) When substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when fifty (50) percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments;

(3) When separate persons borrow from a bank to acquire a business enterprise of which those borrowers will own more than fifty (50) percent of the voting securities or voting interests, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

(4) When the Department determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(d) Special Rule for Loans to a Corporate Group.

(1) Loans or extensions of credit by a bank a corporate group may not exceed fifty (50) percent of the bank's capital and surplus. This limitation applies only to loans subject to the combined general limit. A corporate group includes a person and all of its subsidiaries. For purposes of this paragraph, a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns directly or indirectly more than fifty (50) percent of the voting securities or voting interests of the corporation or company.

(2) Except as provided in paragraph (d)(1) of this section, loans or extension of credit to a person and its subsidiary, or to different subsidiaries of a person, are not combined unless either the direct benefit or the common enterprise test is met.

(e) Special Rules for Loans to Partnerships, Joint Ventures, and Associations.

(1) Loans or extensions of credit to a partnership, joint venture, or association are deemed to be loans or extensions of credit to each member of the partnership, joint venture, or association. This rule does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement, are not held generally liable for the debts or actions of the partnership, joint venture, or association, and those provisions are valid under applicable law.

(2) Loans to Partners.

(i) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to the partnership, joint venture, or association unless either the direct benefit or the common enterprise tests are met. Both the direct benefit and common enterprise tests are

met between a member of a partnership, joint venture or association and such partnership, joint venture or association when loans or extensions of credit are made to the member to purchase an interest in the partnership, joint venture or association.

(ii) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to other members of the partnership, joint venture, or association unless either the direct benefit or common enterprise test is met.

(3) Documentation. In order to demonstrate that the direct benefit and common enterprise provisions of this Rule have been satisfied, a bank must maintain adequate financial, operational, cash flow and ownership structure information relative to the borrower to support that these requirements have been fully met.

### **80-3-1-.02 Check Cashers.**

(1) Every applicant for a license or registration shall demonstrate to the Department that such applicant has sufficient financial resources in the form of working capital and tangible net worth to successfully engage in the business of cashing checks. Sufficiency of financial resources shall be determined through financial analysis by the Department of proforma and historical financial information on the applicant. Each licensee or registrant shall be required to complete and attest to official questionnaires and statements of assets and liabilities when requested for examination purposes. Licensees and registrants shall be prohibited from withholding, deleting, destroying, or altering information requested by an examiner of the Department or making false statements or material misrepresentations to the Department during the course of an examination or on any application or renewal form sent to the Department.

(2) As used in O.C.G.A. Article 4A of Title 7:

(a) "Employee" shall mean such persons (includes a natural person, as well as a partnership, association, corporation or other similar entity) as are regularly compensated by the licensee or registrant, its officers, directors, agents or assigns, to perform services for the licensee or registrant where such persons have access to the monetary resources of the licensee or registrant under the system of internal routine and controls employed in the offices of the licensee or registrant.

(3) Every licensee or registrant shall post in prominent view of each teller window or other customer service station a copy of its license or registration. The words "LICENSED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE" or "REGISTERED BY THE GEORGIA DEPARTMENT OF BANKING AND FINANCE", as applicable, in letters at least one-quarter inch high shall be displaced by window decal or other signage at each public entrance to a licensed or registered check cashing business and all other advertising material relative to the cashing of checks distributed within this state.

(4) Exemptions.

(a) Exemptees: Persons who do not charge a fee to cash a check, draft, or money order. Fees may include cash, may be in the form of exchange of value in excess of regular retail value, in the form of mandatory purchase of goods or services by patrons or in the form of the purchase of catalog items or coupons indicating the ability to receive goods, services, or catalog items.

(b) Registrants: Persons charging a fee of no more than two percent (2%) of the face amount of the check, draft, or money order or two dollars (\$2.00) per check, draft, or money order, whichever is greater, as consideration for the cashing of a check may be exempted from the requirement to obtain a license provided such check cashing service is not advertised, announced or otherwise promoted as a service. Such persons are designated as "Registrants." Notwithstanding such exemption from the requirement to obtain a license, such persons shall be subject to the requirements and restrictions on the cashing of checks set forth in O.C.G.A. §7-1-704 and §7-1-705, record keeping requirements in subsection 5(b) of this Rule, and other requirements as noted herein. Persons qualifying for registration under the provisions of this subsection shall apply for such registration on forms prescribed by the Department and will be required to pay a registration fee prescribed in Rule 80-5-1-.02.

#### (5) Minimum Books and Records.

(a) Books and records required herein shall be maintained by every holder of a license or registration as indicated in this Rule. Information required in items 1 through 8 of subsection (5)(b) of this Rule, shall be maintained by all licensees and registrants, cashing checks for an amount of more than one thousand dollars (\$1,000).

(b) A Daily Record of Checks Cashed shall be maintained as a record of all check cashing transactions occurring each day. For all checks in excess of one thousand dollar (\$1,000), such Daily Record shall include:

1. The date of the transaction;
2. Date of the check, draft, or money order (hereafter referred to as "check");
3. Check number;
4. Name and location or routing number of the payor bank;
5. Name of the Drawer of the check;
6. Name, address, and identifying number (social security, driver's license, passport, etc.) of the person negotiating the check;
7. Amount of the check; and
8. Amount of fee charged for cashing the check.

All other transactions not falling into the categories above may be listed by name of person negotiating the check, amount of check and amount of fee charged. Required information may be maintained through microfilm or other reviewable and reproducible facsimile of the check.

(c) A Daily Cash Reconciliation shall be maintained summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconciliation shall separately reflect cash received from the sale of checks, redemption of returned items, bank cash withdrawals, cash disbursed in cashing of checks, and bank cash deposits.

(d) Records required under subsections (b) and (c) may be maintained in combined form, hand or machine posted, or automated.

(e) A General Ledger containing records of all assets, liabilities, capital, income and expenses shall be maintained. The General Ledger shall be posted from the Daily Record of Checks Cashed or other record of original entry, at least quarterly, and shall be maintained in such manner as to facilitate the preparation of an accurate trial balance of accounts in accordance with generally accepted accounting practices. A consolidated General Ledger reflecting activity at two or more locations under the same license or registration may be maintained provided books of original entry are separately maintained for each location.

(f) An original written authorization or other evidence of verification shall be maintained, attesting to the fact that said corporation has authorized its officers and employees or specific officers or employees to present checks, drawn by the corporation payable to cash or drawn by any party payable to the corporation, to a licensee or registrant for cashing. A check casher shall not cash a check payable to persons other than natural persons unless the payee has on file such a written authorization or verification indicating that the payee has authorized the presentation of such checks on behalf of the payee.

(g) For all entities cashing checks, each customer cashing a check shall be provided a receipt showing the name of the licensee or registrant (or trade name of the licensee or registrant), the transaction date, amount of the check, and the fee charged.

(6) Personnel: Licensees and Registrants.

(a) Every licensee or registrant shall maintain personnel files for its employees.

(b) Each candidate for employment involved with the check cashing function must have a Georgia Crime Information Center (GCIC) criminal history background check performed prior to hiring. A copy of this GCIC criminal history background check shall be maintained in the employee's personnel file until one year after termination of employment by the licensee or registrant. Each person in a supervisory position shall complete a Financial and Biographical Information Report (Form MSB-3) as prescribed by the Department, an authorization for Criminal Background Check, and fingerprint record. Prior to promotion to a supervisory position involved in the check cashing function, or not later than thirty (30) days following promotion to a supervisory position the licensee or registrant shall cause an independent credit

report and a criminal background check to be performed on the person promoted. The foregoing documents shall be retained in the personnel file until one year after termination of employment by the licensee or registrant. A "supervisory position" shall mean any position occupied by a person responsible for the day-to-day job performance of one or more other persons or responsible for the overall management of any check cashing outlet except on a temporary (less than one month) basis and irrespective of the number of subordinates employed.

(c) Persons found to have been convicted of an offense punishable as a felony involving moral turpitude in this state may not be employed by a licensee or registrant without compliance with O.C.G.A. §7-1-702.

(d) Persons found after investigation to have materially misstated information on Form MSB-3 shall be terminated from employment; provided, however, the licensee or registrant may continue employment, subject to review by the Department, by placing in the personnel file a complete statement of extenuating circumstances considered valid reasons for continuing employment.

~~(e) All candidates for employment shall be provided a copy of this subsection by the licensee or registrant.~~

(7) All checks, drafts, and money orders drawn on a financial institution domiciled in the United States and cashed pursuant to a license or registration under Article 4A of Title 7, O.C.G.A., shall be sent for deposit to the licensee's or registrant's account at a depository financial institution domiciled within the United States or sent for collection not later than close of business on the next business day after the date on which the check was cashed.

(8) Each licensee, registrants, and exemptee shall maintain a principal location at which the books and records are maintained and which is accessible to the Department for examination during normal business hours. The Department may examine registrants and exemptees to verify qualification for exemption from licensing. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) or for material withholding of information or misrepresentation shall be revocation of the license, registration, or exempt status. The business of the licensee may be conducted through additional outlets, including those operated as mobile facilities, provided that mobile facilities maintain a regular schedule of times and locations at which they provide check cashing services, and such file the schedule is filed with the Department, and comply with local licensure requirements at each location at which business is conducted.

(9) Sale of Business; Closing of Check Cashing Business.

(a) A licensed check casher or registrant shall notify the Department in writing within fifteen (15) days of the permanent closing of its check cashing business and shall surrender its original license or registration to the Department at that time.

(b) A licensed or registered check casher shall notify the Department in writing thirty (30) days prior to the sale of the check cashing business when such sale results in a change in

ownership. Licenses or registrations issued by the Department shall not be transferred or assigned, or subject to a change in ownership without prior written application to and approval by the Department. Any license or registration that is transferred, assigned or subject to a change in ownership without prior approval of the Department shall be regarded as invalid under law. Engaging in the business of cashing checks under a license or registration that has been transferred, assigned or otherwise acquired without prior approval by the Department shall subject a person to fines and administrative action.

Authority O.C.G.A. §7-1-61; §7-1-688; §7-1-707.3; §7-1-704; §7-1-709.

### **80-3-1.03 Money Service Businesses: Compliance with Federal Requirements.**

(1) For the purposes of this Rule, Money Service Businesses (MSBs) refer to a class of non-bank financial institutions defined in the federal Bank Secrecy Act, for purposes of this Rule Chapter the “Act”), which Act requires such non-bank financial institutions to register with the Department of the Treasury and to comply with other recordkeeping and compliance laws.

(2) A licensee or registrant under O.C.G.A. Article 4 or 4A of Title 7 that is by definition an MSB under federal law, shall comply with the federal registration requirements for such businesses and shall provide the Department with evidence of such registration.

(3) Georgia requires that all licensees and registrants under O.C.G.A. Article 4 or 4a of Title 7 comply with the recordkeeping requirements, the necessity for a compliance program, currency transaction reporting, and suspicious activity reporting of the Act and its regulations, including those at 31 CFR Part 103 provided they are required to do so by the Act. MSBs filing a suspicious activity report (SAR) with a federal authority must send a copy of such report to the Department at the same time the SAR is filed. Other recordkeeping requirements required by state law are provided for in Rule 80-3-1.02(5). Licensees and registrants may consult [www.msb.gov](http://www.msb.gov) [http://www.fincen.gov/financial\\_institutions/msb/](http://www.fincen.gov/financial_institutions/msb/) for questions about the federal requirements.

Authority O.C.G.A. §7-1-61; §7-1-688; §7-1-704.

### **80-5-1.02 License, Registration and Supervision Fees for Check Cashers and Sellers, Money Transmitters, Representative Offices and Mortgage Lenders and Brokers; Due Dates.**

(1) Check sellers and money transmitters.

(a) The annual license fee is two thousand dollars (\$2,000).

(b) The annual renewal license fee is two thousand dollars (\$2,000) for check sellers and one thousand dollars (\$1,000) for money transmitters and shall be due and must be received by the Department on or before the first day of November of each year. Where the person or corporation engages in both the sale of checks and money transmission, the higher of the two

fees shall be due and payable. Annual license renewal fees not received prior to November 1 will be assessed a late fee of three hundred dollars (\$300) and cannot be assured of issuance or renewal prior to January 1.

(c) An additional non-refundable application investigation fee of two hundred fifty dollars (\$250) will be assessed.

(d) All check seller and money transmitter licenses shall expire on December 31 of each year.

(2) Check Cashers.

(a) The annual license fee is five hundred dollars (\$500).

(b) The annual renewal license fee is five hundred dollars (\$500).

(c) An initial investigation and supervision fee shall be seven hundred fifty dollars (\$750) for the first year. It is not refundable, but if the license is granted it shall satisfy the annual fee for the first license period.

(d) Initial and renewal license fees shall also include an additional fifty dollars (\$50) for the second and each additional location, plus a thirty dollars (\$30) processing fee for each set of fingerprint cards required to be submitted with the application.

(e) Annual renewal license fees shall be due and must be received by the Department on or before the first day of August of each year. Annual renewal license fees not received prior to the first day of August of each year will be assessed a late fee of three hundred dollars (\$300) and cannot be assured of renewal prior to October 1. Applicants may not operate a check cashing business without a current license.

(f) Check cashers desiring exemption pursuant to Rule 80-3-1-.02(4)(b) and designated as Registrants shall file an initial application and pay a registration fee of two hundred dollars (\$200) and an annual renewal application and fee of one hundred dollars (\$100) due and must be received by the Department on or before the first day of August of each year. Annual renewal fees not received prior to the first day of August of each year will be assessed a late fee of one hundred dollars (\$100) and cannot be assured of renewal prior to October 1.

(g) An initial investigation and supervision fee shall be three hundred dollars (\$300) for the first year. It is not refundable, but if the license is granted it shall satisfy the annual fee for the first registration period.

(h) All check cashers licenses and registrants shall expire on September 30 of each year.

(3) Registrants of representative offices, trust production offices, business production offices, and loan production offices shall file a registration statement, as prescribed by the Department, and shall pay a registration fee of one hundred fifty dollars (\$150) on or before the first day of January of each year. Such fee is intended to cover the costs of responding to questions or complaints from consumers with regard to these entities doing business in Georgia and is in lieu



of registration under O.C.G.A. §16-14-15, as provided in O.C.G.A. §7-1-11. Registrants of international bank representative offices shall pay a registration fee of one thousand dollars (\$1,000). Each bank holding company supervised by or registered with the Department shall pay on or before January 31 of each year an annual registration fee of one thousand dollars (\$1,000). Each Georgia bank holding company or holding company that owns a Georgia bank must pay five hundred dollars (\$500) for each additional Georgia subsidiary corporation in those categories, provided, however, any registrant required to register and pay a fee by another paragraph of this chapter shall only be required to pay one fee which shall be the higher fee.

(4) Mortgage ~~lenders and brokers~~, licensees and registrants.

(a) Lenders. The ~~annual~~ initial and renewal application and license fee for mortgage lenders shall be one thousand dollars (\$1,000). The initial one thousand dollars (\$1,000) fee covers the main office. Any branch offices included in the initial application shall be assessed a fee of three hundred fifty dollars (\$350) each. A fee of three hundred fifty dollars (\$350) will be assessed for each additional office not initially registered, if such office is located in Georgia, and if mortgage lending activity is conducted at the office. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees plus a twenty dollar (\$20) fee for each approved branch office located in Georgia, must be received prior to ~~before~~ December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and license fee not received ~~by~~ prior to the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Applicants may not conduct a mortgage business without a current license or registration.

(b) Brokers. The ~~annual~~ initial and renewal application and license fee for mortgage brokers shall be five hundred dollars (\$500) ~~which covers the main office~~. The initial five hundred dollar (\$500) fee covers the main office. Any branch offices located in Georgia ~~included in the initial application~~ shall be assessed a fee of three hundred fifty (\$350) each. ~~A fee of three hundred fifty dollars (\$350) will be assessed for each additional office not initially registered, located in Georgia at which mortgage brokering activity is conducted~~. Brokers include loan processors. Processors are defined in Rule 80-11-4-.07. Such a processor may have a separate main office and other branch offices where mortgage loan processing is done. The offices will be treated the same as brokers' offices. An initial investigation fee of two hundred fifty dollars (\$250) per applicant shall also apply. Subsequent renewal applications and license fees must be received before prior to December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and license fee, plus a twenty dollar (\$20) fee for each approved branch office located in Georgia, that is not received ~~by~~ prior to the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Applicants may not conduct a mortgage business without a current license or registration.

(c) Mortgage Loan Originators. The initial and renewal application and license fee for mortgage loan originators shall be one hundred dollars (\$100), due prior to December 1 of each year. Subsequent renewal applications and registration fees must be received by the Department prior to December 1 of each year or the applicant will be assessed a late fee of one hundred

dollars (\$100). A renewal application, acceptable to the Department, along with the correct fees not received by the Department prior to the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Applicants may not conduct mortgage loan origination activity without a current license. The initial licensure application period shall be from at least January 4, 2010 to March 31, 2010, subject to change at the discretion of the Department.

~~(e)~~ (d) Lender Registrants. The ~~annual~~ initial and renewal application and registration fee for mortgage lenders required to register but not be licensed with the Department shall be one thousand dollars (\$1,000), due ~~on or before prior to the first day of~~ prior to December 1 of each year. Subsequent renewal applications and registration fees must be received ~~before prior to~~ prior to December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and registration fee not received ~~by prior to~~ prior to the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Applicants may not conduct a mortgage business without a current license or registration.

~~(d)~~ (e) Broker Registrants. The ~~annual~~ initial and renewal application and registration fee for mortgage brokers required to register but not be licensed with the Department shall be five hundred dollars (\$500), due ~~on or before prior to the first day of~~ prior to December 1 of each year. Subsequent renewal applications and registration fees must be received ~~before prior to~~ prior to December 1 of each year or the applicant will be assessed a late fee of three hundred dollars (\$300). A renewal application and registration fee not received ~~by the prior to~~ prior to December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Applicants may not conduct a mortgage business without a current license or registration.

~~(e)~~ (f) All license, investigation, registration, supervision and late fees must be paid prior to renewal of the annual license or registration, reinstatement of a license or registration, reapplication for a license or registration or any other approval from the Department.

~~(f)~~ (g) All late fees collected by the Department, net of the cost of recovery, which cost shall include any cost of hearing and discovery in preparation for hearing, shall be paid into the state treasury to the credit of the general fund or may be paid as provided in O.C.G.A. §7-1-1018~~(d)~~(e).

~~(g)~~ (h) Applicants for approval to acquire directly or indirectly ten percent (10%) or more of the voting shares of a corporation or ten percent (10%) or more of the ownership of any other entity licensed to conduct business as a mortgage lender and/or a mortgage broker under O.C.G.A. Article 13 (otherwise called change of control) shall pay a nonrefundable investigation, application and processing fee of five hundred dollars (\$500).

~~(h)~~ (i) Application for an additional office of a licensee shall be accompanied by a nonrefundable fee of three hundred fifty dollar (\$350), as provided in O.C.G.A. §7-1-1006.

~~(i) No fee is assessed for a wholly owned subsidiary of a lender who files and keeps current a proper notification statement.~~

(j) The fee for initial application for approval by the Department for a school or education provider shall be five hundred dollars (\$500). An application for approval will be on a form provided by the Department at its website. The fee is nonrefundable. The fee for annual renewal of such approval is two hundred fifty dollars (\$250).

(k) The fee for name permission application investigations shall be one hundred fifty dollars (\$150). The fee is non-refundable.

(5) The Department may discount or surcharge all supervision or license fees herein provided to assure funding of annual appropriations by the General Assembly.

Authority Ga. L. 1974, pp. 705, 732, 733, 921; Ga. L. 1976, Act 762, p. 168; 1990, p. 739; 1993, p. 543; O.C.G.A. §7-1-41; §7-1-61; §7-1-685; O.C.G.A. §7-1-701; O.C.G.A. §7-1-703; O.C.G.A. §7-1-716; O.C.G.A. §7-1-721; 7-1-1001.1; and 7-1-1005

#### **80-5-1-.07 License Renewal Periods and Requirements for Mortgage Brokers, and Mortgage Lenders, and Mortgage Originators.**

(a) For purposes of this Article the Nationwide Mortgage Licensing System and Registry (NMLSR) is defined as a uniform multi-state administration of an automated licensing system for mortgage brokers and mortgage lenders. The department's participation in the NMLSR is authorized by O.C.G.A. §7-1-1003.5.

~~(b) To facilitate the initial transition of mortgage brokers and mortgage lenders to the NMLS system, a conversion from a fiscal year licensing period to a calendar year licensing period will begin in January 2009. All licensees and registrants will be required to transition onto the system by setting up their accounts on the NMLS. The transition period will be in effect for the six month period of January 2, 2009 to June 30, 2009, and must coincide with a renewal application made simultaneously with the Department for the six month conversion licensing period of July 1, 2009 to December 31, 2009.~~

~~(c) Renewal applications for licenses and registrations for the conversion licensing period of July, 1, 2009 to December 31, 2009, must be submitted by the current renewal due date of April 1, 2009, at which time a prorated renewal fee and a one time NMLS account set up fee will be assessed to cover the cost of licensing or registration for the conversion licensing period. At the conclusion of the six month conversion licensing period all mortgage licensees and registrants properly registered with NMLS and approved by the Department will hold licenses and registrations that will expire as noted in paragraph (e) of this section. All fees are non-refundable.~~

~~(d)~~ (b) Beginning January 2, 2009, aAll applications for new licenses or registrations must be made through NMLSR. Fees for new applications include an initial Department investigation

fee and the appropriate application fee for the application type. ~~After January 2, 2009,~~  
~~a~~Applications for new licenses and registrations which are approved between November 1 and December 31 in any year will not be required to file a renewal application for the next calendar year. All fees are non-refundable.

~~(e) (c) After the conversion year period, a~~All licenses and registrations issued pursuant to the Act shall expire on December 31 of each year, and an application for renewal shall be made annually between November 1 and December 31 each year. Subsequent renewal applications and/or license fees must be received by prior to December 1 of each year or the applicant will be assessed a late fee ~~of three hundred dollars (\$300)~~ as set forth in these rules by license or registration type. A renewal application and/or license fee not received by prior to the December 1 renewal application deadline of each year cannot be assured of issuance or renewal prior to January 1, at which time the license or registration will be considered to be expired. Any license or registration which is not renewed by prior to December 31 will require the applicant to file a reinstatement application in order to conduct mortgage business in the State after that date.

Authority O.C.G.A. §7-1-1003.5

#### **80-11-1-.02 Advertising Requirements.**

Any advertisement of a mortgage loan that is subject to regulation under O.C.G.A. Title 7, Article 13 and that is made, published, disseminated or circulated in this state shall comply with the requirements set forth below.

(a) Advertisements for mortgage loans shall not be false, misleading, or deceptive.

(b) Advertisements for mortgage loans shall not indicate in any manner that the interest rates or charges for loans are in any way recommended, approved, set or established by the state or by any law of the state.

(c) All solicitations or advertisements, including business cards and websites, for mortgage loans disseminated in this state by persons required to be licensed or registered under O.C.G.A. Title 7, Article 13 shall contain the name, license number, valid unique Nationwide Mortgage Licensing System and Registry (NMLSR) identifier, and an office address of the licensee or registrant advertising the mortgage loan, which name, address, and license number shall conform with the name, license number, valid unique NMLSR identifier and office address on record with the Department of Banking and Finance.

(d) All advertisements disseminated in this state by persons required to be licensed under O.C.G.A. Title 7, Article 13 in any media, whether print or electronic, shall contain the words “Georgia Residential Mortgage Licensee” or, if an entity is licensed in more than one state, the licensee’s advertisement may list Georgia as a state in which the licensee is licensed.

(e) All advertisements for mortgage loans shall comply with all applicable federal and state laws.

(f) For purposes of this Rule, "advertisement" means material used or intended to be used to induce the public to apply for a mortgage loan. Such term shall include any printed or published material, audio or visual material, website, or descriptive literature concerning a mortgage loan subject to regulation under O.C.G.A. Title 7, Article 13 whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, electronic, billboard or similar display. The term advertisement shall not include promotional materials containing fifteen words or fewer relating to the mortgage business of the entity which material does not contain references to a specific rate or product, such as balloons, hats, pencils or pens, and calendars ~~and business cards~~.

(g) Every ~~person~~ mortgage broker or mortgage lender required to be licensed or registered shall maintain a record of samples of its advertisements (including commercial scripts of all radio and television broadcasts) for examination by the Department of Banking and Finance.

(h) An advertisement shall not include an individual's loan number, loan amount, or other publicly available information unless it is clearly and conspicuously stated in bold-faced type at the beginning of the advertisement that the person disseminating it is not authorized by, ~~in sponsorship with,~~ acting on behalf of, or otherwise affiliated with the individual's lender, which shall be identified by name. Such an advertisement shall also state that the loan information contained therein was not provided by the recipient's lender.

Authority Ga. L. 1974, p. 733; Ga. L. 1993, p. 543; O.C.G.A. §7-1-61; §7-1-1004.3; §7-1-1012; §7-1-1016

#### **80-11-1.04 Branch Managers.**

(1) A "branch manager" shall mean a person who supervises daily activities in Georgia of a licensee, whether at a main or branch location, and regardless of job title.

(2) No branch manager shall be permitted to manage a location in Georgia without being approved by the department. A branch manager may be put in place subject to departmental approval, but the department must receive a complete application for approval within 15 calendar days of the placement. No individual may serve as the branch manager of more than one location of a licensee unless the licensee can demonstrate that the proposed branch manager will be able to effectively manage these locations to ensure that they operate in compliance with state and federal law, and that the manager can adequately supervise the daily functions performed by the employees at the locations. In order to qualify for the employee exemption, an employee must be supervised on a daily basis by the licensee. Rule 80-11-4.03. Considerations by the department in determining whether a branch manager may supervise more than one location will include: proximity of branches to each other, volume of business at each, experience level of proposed manager and plans to handle the supervision.

(3) The department shall ~~be authorized to do~~ conduct a background check, obtain a credit report, and require a financial statement and such other pertinent information as it may require to

satisfy itself that the location will be operated by the branch manager responsibly and in compliance with the laws and rules of this state.

~~(4) The licensee must conduct an initial Georgia Crime Information Center (GCIC) background check on each branch manager and send it to the department together with a credit report run within 30 days of submission of an application. In the event that the background investigation of the branch manager by the licensee indicates that the information is incomplete or that the proposed manager has a criminal record in any state other than Georgia (“multi-source offender”),~~ †The applicant must submit two sets of fingerprints, along with a money order or certified check payable to the department for \$30.00 in the appropriate amount set by the department in order for the department to cause to be administered the expanded background check as required by Code Section O.C.G.A. § 7-1-1004 (†)(k).

Authority O.C.G.A. §7-1-61; §7-1-1006; §7-1-1012.

#### **80-11-1-.05 Employee Background Checks; Covered Employees.**

(1) As required by O.C.G.A. §7-1-1004~~(†)(k)~~, applicants and licensees must complete background checks on all covered employees. Covered employees include those employees who physically work in the state of Georgia and who may enter, delete or verify any information on any mortgage loan application form or document. Employees of a licensee or applicant who are not involved in the mortgage loan business are not covered employees. Background checks on all covered employees must be completed and found satisfactory by the applicant or licensee within ninety (90) days of the initial date of hire. Employers should submit background information to the proper law enforcement authorities promptly upon initial hire in order to meet the ninety (90) day requirement. A background check must be initiated for a person in the employ of a licensee or applicant within ten (10) days of the date of initial hire.

~~(2) As used in O.C.G.A. §7-1-1004(e),~~ †The term “mortgage loan application form or document” shall mean any prospective borrower’s personal electronic or printed information and documents, including but not limited to bank statements, W-2 forms, income tax returns, employment records, and other personal financial information required to be submitted in the course of making an application for a mortgage loan. It would also include documents maintained and generated by the licensee in the course of the application and administration of the mortgage loan, including but not limited to electronic or printed/written information on the mortgagor and their loan, including personal and loan database information, payments and payment history information, past due reports and schedules, coupon books, information generated for tax purposes, including escrow information, and any other information generated which would include the financial and loan history of the mortgagor. Documents would also include computer displays of personal and mortgage loan information on an individual borrower or client which may be disseminated by the licensee’s personnel in the course of verifying information for customers and other business related inquiries.

(3) Applicant’s and licensee’s requests for background checks are handled by the Georgia Crime Information Center (GCIC) following their rules and regulations (see also O.C.G.A. §35-

3-34). Background checks must be full GCIC checks following that agency's rules and regulations and must not have any time period limitations or restrictions in the search criteria. Any fees charged by GCIC for processing background checks must be paid by the applicant or licensee. The background checks may be arranged for through a local law enforcement office, so long as the background check is done by GCIC.

(a) If the information from the background check is unclear or incomplete, appears to address or makes reference to a felony conviction, or indicates that the employee has a criminal record in any state other than Georgia ("multi-source offender"), the applicant or licensee must immediately submit two sets of fingerprints of the person, along with the applicable processing fee and any additional information the Department may require to complete an expanded background investigation. A money order or certified check ~~for thirty dollars (\$30)~~ in an amount as directed by the Department made payable to the Department shall be submitted with the cards in order to have the cards processed. Applicant or licensee shall discuss the Georgia Residential Mortgage Act's legal requirements for employment with the subject employee.

(b) An employee may remain employed by the applicant or licensee pending results of a fingerprint follow up investigation if no felony convictions appear on the GCIC report. If the employee is found to have disqualifying conviction data according to O.C.G.A. §7-1-1004~~(d)~~(h), or if the applicant or licensee knows that a disqualifying conviction is present, the applicant or licensee must immediately take action to comply with O.C.G.A. §7-1-1004(h).

Authority O.C.G.A. §7-1-61; §7-1-1012; §7-1-1004.

#### **80-11-2-.01 Mortgage Broker and Lender Location Requirement and Minimum Retention Period.**

(1) Any ~~person~~ mortgage broker or lender required to be licensed or registered under Article 13 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated ("licensee" or "registrant") must maintain required books, accounts and records at the principal place of business. Should a licensee or registrant wish to maintain such records elsewhere, it must notify the department in writing prior to said books, accounts, and records being maintained in any place other than the designated principal place of business. Such notification shall be submitted to the Department of Banking and Finance, 2990 Brandywine Road, Suite 200, Atlanta, Georgia 30341.

(2) Books, accounts and records maintained at a location other than the principal place of business shall be made available to the department within five (5) business days from the date of written request by the department and at a reasonable and convenient location acceptable to the department.

(3) "Principal place of business" means the location designated as the main office by the licensee or registrant in the initial written application for licensure or registration or as amended thereafter in writing to the department.

(4) All books, records and accounts required by Rule 80-11-2-.02(1) (b), (c), (d), (e), (f), (g), (h), (j), ~~and (m)~~ and (n) and Rule 80-11-2-.03 must be maintained for a period of five (5) years. All books, records and accounts required by Rule 80-11-2-.02(1)(a), (i), (k) and (l) and by Rule 80-11-2-.04 must be maintained and kept complete for a period of five (5) years from the final disposition of the loan application to which the records relate (e.g. five (5) years from date application denied or cancelled or five years from date mortgage loan closed).

(5) Any books, accounts or records required to be maintained by Chapter 80-11-2 of the Rules of the Department of Banking and Finance may be maintained in their original form, on microfiche or other electronic media, provided: (i) that the records shall be made available to the department as provided in this Rule; and (ii) at the request of the department, the records shall be printed on paper for inspection or examination.

(6)(a) The penalty for maintaining books, accounts and records at a location other than the principal place of business without written notification to the department may be suspension of the license or registration, other appropriate administrative action or fine.

(b) The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the department) shall be revocation of the license or registration.

Authority Ga. L. 1993, p. 543; O.C.G.A. §7-1-61; §7-1-1012.

#### **80-11-2-.02 Minimum Requirements for Books and Records.**

(1) Any ~~person~~ mortgage broker or lender required to be licensed or registered under Article 13 ("licensee" or "registrant") must maintain the following books, accounts and records:

(a) Copies of all disclosure documents required by Rule 80-11-1-.01;

(b) Samples of advertisements as required by Rule 80-11-1-.02;

(c) Copies of all written complaints by customers and written records of disposition;

(d) Copies of examination reports prepared by any agency, division or corporate instrumentality of the United States, the State of Georgia or any other state, which reports pertain to the mortgage brokerage and/or lending business of the licensee or registrant and are not prohibited from being disclosed to the Department of Banking and Finance by state or federal law;

(e) Copies of reports required to be prepared and/or submitted by the licensee or registrant to any agency, division, or corporate instrumentality of the United States, the State of Georgia or any other state, which reports pertain to the mortgage brokerage and/or lending business of the licensee or registrant and are not prohibited from being disclosed to the Department of Banking and Finance by state or federal law;



(f) Copies of all payroll records, including federal and state withholding tax forms, W-2's, and 1099 forms filed with the Internal Revenue Service by the licensee or registrant, or its agent on behalf of individuals employed by the licensee or registrant or on behalf of individuals acting as independent contractors in the mortgage brokerage and/or lending business of the licensee or registrant;

(g) A general ledger and subsidiary records sufficient to produce, when requested by the department, an accurate monthly statement of assets and liabilities and a cumulative profit and loss statement for the current operating year.

(h) All checkbooks, bank statements, deposit slips and canceled checks which pertain to the mortgage brokerage and/or lending business of the licensee or registrant;

(i) Supporting documentation for all expenses and fees paid by the mortgage broker on behalf of the customer, which documentation indicates the amount paid and the date paid;

(j) Copies of all credit report bills received from all credit reporting agencies for the most recent five year period;

(k) Documentation to indicate a consumer had a choice of attorney, if attorneys' fees are intended to be excluded from a points and fees calculation under the Georgia Fair Lending Act;

(l) An indication of whether each loan has points and fees of 5% or more, as calculated under the Georgia Fair Lending Act, and

(m) Documentation to support the source and purpose for each receipt of monies in any form in an amount greater than \$100 and documentation to identify the recipient and purpose of each payment of monies in any form in an amount greater than \$100 by the licensee or registrant in its mortgage brokerage and/or lending business in order that the receipts may be reconciled to bank deposits and to books of the licensee or registrant.

(n) Employee file for each employee. The employee file must contain all documents related to hiring the employee, including criminal background check, date of employment, and date the Department's website was reviewed to verify eligibility for employment.

(2) Failure to maintain the books, accounts and records required under paragraph (1) above may result in suspension of the license or registration or other appropriate administrative action and will subject the licensee or registrant to fines in accordance with regulations prescribed by the department.

Authority Ga. L. 1993, p. 543; O.C.G.A. §7-1-61; §7-1-1012.

### **80-11-2-.03 Mortgage Loan Transaction Journal.**

(1) Any person who is acting as a mortgage broker and who is required to be licensed under Article 13 of Title 7, whether as a broker or a lender ("licensee"), shall maintain a journal of mortgage loan transactions which shall include, at a minimum, the following information:

(a) Full name of proposed borrower and all co-borrowers, and the last four digits of their social security number(s);

(b) Date customer applied for the mortgage loan;

(c) Name and Nationwide Mortgage Licensing System and Registry (NMLSR) unique identifier of the loan officer responsible for the loan application whose name also appears on the application; and

(d) Disposition of the mortgage loan application and date of disposition. The journal shall indicate the result of the loan transaction. The disposition of the application shall be categorized as one of the following: loan closed, loan denied, application withdrawn, application in process or other (explanation).

(2) A complete mortgage loan transaction journal shall be maintained in the principal place of business. The journal shall be kept current. Records may be kept at a branch but the principal place of business must have a current journal updated no less frequently than every seven (7) days. The failure to initiate an entry to the journal within seven (7) business days from the date of the occurrence of the event required to be recorded in the journal shall be deemed a failure to keep the journal current.

(3) Failure to maintain the mortgage loan journal or to keep the journal current (incidental and isolated clerical errors or omissions shall not be considered a violation) may be grounds for suspension or revocation of the license or other appropriate administrative action and will subject the licensee to fines in accordance with regulations prescribed by the department.

(4) Loan processors who are required to be licensed shall be required to keep a mortgage loan transaction journal to the extent they receive information that is required by law or rule to be in the journal. Such journal shall at a minimum include for each loan the full name of the borrower(s), the name ~~of the broker or lender~~ and NMLSR unique identifier of the mortgage broker or lender for whom the processing was performed; the name and the NMLSR unique identifier of the mortgage loan originator for whom the processing was performed, and the dates the loan application was received and returned to such lender or broker. If a processor performs other duties of a broker aside from processing the loan, the processor/broker shall be responsible for keeping the same information as a broker, as provided in subsection (1) of this rule.

Authority Ga. L. 1993. p. 543; O.C.G.A. § 7-1-1012.

#### **80-11-2-.04 Mortgage Loan Files.**

(1) Any person who is acting as a mortgage broker and who is required to be licensed under O.C.G.A. Title 7, Article 13, whether as a broker or a lender ("licensee"), shall maintain a loan file for each mortgage loan transaction. The files shall be maintained in an alphabetical or numerical sequence in the principal place of business or in each branch office where mortgage loans are originated, provided that the branch office is indicated on the licensee's initial written application for licensure or written amendment thereto.

(2) Each loan file shall contain the following:

(a) Copy of the signed mortgage loan application with the Nationwide Mortgage Licensing System and Registry (NMLSR) unique identifier of the mortgage loan originator if the application form is received by the licensee;

(b) Copy of credit report if the credit report is pulled or ordered by the licensee;

(c) Copy of the appraisal and the order for such appraisal if the appraisal is ordered by the licensee;

(d) Copy of signed closing statement (HUD-1) or documentation of denial or cancellation of loan application;

(e) Copies of the disclosure documents required by Rule 80-11-1-.01; and

(f) Copies of all contracts, letters, notes and memos regarding the customer, including but not limited to lock-in agreements and commitment agreements.

(3) Failure to maintain files and required documentation (incidental and isolated clerical errors or omissions shall not be considered a violation) may be grounds for suspension of the license or other appropriate administrative action and will subject the licensee to fines in accordance with regulations prescribed by the Department.

Authority Ga. L. 1993, p. 543.

#### **80-11-3-.01 Administrative Fines.**

(1) As authorized under Article 13 of Chapter 1 of Title 7, O.C.G.A. §7-1-1018(g) and §7-1-1005(d), the Department establishes the following fines and penalties for violation of the Georgia Residential Mortgage Act ("GRMA") or its rules. Except as otherwise indicated, these fines and penalties apply to any person who is acting as a mortgage lender or broker and who is required to be licensed or registered under O.C.G.A. Title 7, Article 13 ("licensee" or "registrant"). The Department, at its sole discretion, may waive or modify a fine based upon the gravity of the

violation, history of previous violations, and such other facts and circumstances as have contributed to the violation.

(2) All fines levied by the Department are due within thirty (30) days from date of assessment and must be paid prior to renewal of the annual license or registration, reinstatement of a license or registration, or reapplication for a license or registration, or any other activity requiring Departmental approval.

(3) All fines collected by the Department, net of the cost of recovery, which cost shall include any cost of hearing and discovery in preparation for hearing, shall be paid into the state treasury to the credit of the general fund or may be paid as provided in O.C.G.A. §7-1-1018(d).

(4) Dealing with Unlicensed Persons. Any licensee or registrant or any employee of either who purchases, sells, places for processing or transfers (or performs activities which are the equivalent thereof) a mortgage loan or loan application to or from a person who is required to be but is not duly licensed under the GRMA shall be subject to a fine of one thousand dollars (\$1,000) per transaction and the licensee or registrant shall be subject to suspension or revocation. Licensees are responsible for the actions of their employees.

(5) Relocation of Office. Any mortgage broker or mortgage lender licensee who relocates their main office or any additional office and does not notify the Department within thirty (30) days of the relocation in accordance with O.C.G.A. §7-1-1006(e) shall be subject to a fine of five hundred dollars (\$500).

(6) Unapproved Offices. In addition to the application, fee and approval requirements of O.C.G.A. §7-1-1006(f), any licensee who operates an unapproved branch office shall be subject to a fine of five hundred dollars (\$500) per unapproved branch office operated and their license will be subject to revocation or suspension;

(7) Change in Ownership. Any person who acquires ten percent (10%) or more of the capital stock or a ten percent (10%) or more ownership of a mortgage broker or mortgage lender licensee without the prior approval of the Department in violation of O.C.G.A. §7-1-1008 shall be subject to a fine of five hundred dollars (\$500) and their license or registration will be subject to revocation or suspension;

(8) Doing Business Without a License or in Violation of Administrative Order. Any person who acts as a mortgage broker or mortgage lender prior to receiving a current license or registration required under O.C.G.A. Title 7, Article 13, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars (\$1,000) per transaction and their mortgage lender or broker application will be subject to denial or their license or registration will be subject to revocation or suspension.

(9) Hiring a Felon. Any mortgage broker or mortgage lender licensee or registrant who hires or retains an employee who is a felon as described in O.C.G.A. §7-1-1004(d)(h), which employee has not complied with the remedies provided for in O.C.G.A. §7-1-1004(d)(h), may be

fined five thousand dollars (\$5,000) per employee found to be in violation of such provision and their license or registration will be subject to revocation or suspension.

(10) Hiring Persons Otherwise Disqualified from Conducting a Mortgage Business for violations prior to July 1, 2007. Any mortgage broker or mortgage lender licensee or registrant who employs any person against whom a final cease and desist order was issued for a violation that occurred BEFORE July 1, 2007 within the preceding three (3) years, if such order was based on a violation of O.C.G.A. § 7-1-1013 or based on the conducting of a mortgage business without a required license or exemption, or whose license was revoked within three (3) years of the date such person was hired pursuant to O.C.G.A. § 7-1-1004~~(g)~~(o) shall be subject to a fine of five thousand dollars (\$5,000) per such employee and its license or registration will be subject to revocation or suspension;

(10.1) Hiring Persons Otherwise Disqualified from Conducting a Mortgage Business for violations on or after July 1, 2007. Any mortgage broker or mortgage lender licensee or registrant who employs any person against whom a final cease and desist order has been issued for a violation that occurred ON OR AFTER July 1, 2007 within the preceding five (5) years, if such order was based on a violation of O.C.G.A. § 7-1-1013 or based on the conducting of a mortgage business without a required license or exemption, or whose license was revoked within five (5) years of the date such person was hired pursuant to O.C.G.A. § 7-1-1004~~(g)~~(o) shall be subject to a fine of five thousand dollars (\$5,000) per such employee and its license or registration will be subject to revocation or suspension;

(11) Books and Records Violations. If the Department, in the course of an examination or investigation, finds that a licensee or registrant has failed to maintain their books and records according to the requirements of O.C.G.A. §7-1-1009 and Rule Chapter 80-11-2, such licensee or registrant may be subject to a fine of one thousand dollars (\$1,000) for each violation of a books and records requirement listed in Rule Chapter 80-11-2.

(12) Maintenance of Loan Files. Any person who is required to be licensed under O.C.G.A. Title 7, Article 13 as a mortgage broker or any lender acting as a broker who fails to maintain a loan file for each mortgage loan transaction as required by Rule 80-11-2-.04 or who fails to have all required documents in such file shall be subject to a fine of one thousand dollars (\$1,000) per file not maintained or not accessible, or per file not containing required documentation.

(13) Payment of \$6.50 fees. Any person who acts as the collecting agent at a closing of a mortgage loan transaction subject to the Georgia Residential Mortgage Act, is liable for payment of the \$6.50 fee to the Department, pursuant to O.C.G.A. §7-1-1011 and Rule 80-5-1-.04. Any remittance of the \$6.50 fees that is received after it is due shall subject the person to a late fee of one thousand dollars (\$1,000) for each due date missed. If the Department finds that a person has not, through negligence or otherwise, submitted \$6.50 fees within six months of the due date, it may impose an additional one thousand dollars (\$1,000) fine for failure to remit fees. Repeated failure to submit \$6.50 fees may be grounds for revocation of license.

(14) Repealed. Reserved.

(15) Reporting of Violation of Law or Discharge of Employee for Same. Any person required to be licensed or registered under O.C.G.A. Title 7, Article 13 as a mortgage lender or broker, who fails to report prohibited acts or the discharge of employees for dishonest acts, pursuant to O.C.G.A. §7-1-1007(d) shall be subject to a fine of one thousand dollars (\$1,000) per act not reported in writing to the Department within 10 days of knowledge of such act.

(16) Prohibited Acts. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Article 13 as a mortgage broker or mortgage lender who violates the provisions of O.C.G.A. §7-1-1013 shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation and his or her license shall be subject to suspension or revocation. Misrepresentations as defined in O.C.G.A. §7-1-1000 are subject to fine and include but are not limited to: (i) inaccurate or false identification of applicant's employer; (ii) significant discrepancy between applicant's stated income and actual income; (iii) omission of a loan to applicant, listed on loan application, which was closed through same lender or broker; (iv) false or materially overstated information regarding depository accounts; (v) false or altered credit report; and (vi) any fraudulent or unauthorized document used in the loan process. A fine of one thousand dollars (\$1,000) shall be assessed for any other violation of O.C.G.A. §7-1-1013. The Department shall upon written request provide evidence of the violation.

(17) Branch Manager Approval. Any person who is required to be licensed or registered as a mortgage broker or mortgage lender shall be subject to a fine of five hundred dollars (\$500) for operation of a branch with an unapproved branch manager and the license will be subject to revocation or suspension. No such fine shall be levied while Department approval is pending if timely application for approval is made pursuant to Rule 80-11-1-.04.

(18) Education and Experience Requirements. Any mortgage broker licensee subject to the experience and education requirements who fails to meet such requirements shall be fined one thousand dollars (\$1,000) for operating a mortgage business without meeting licensing standards, and their license or registration will be subject to revocation or suspension.

(19) Failure to Fund. The GRMA in O.C.G.A. §7-1-1013(3) prohibits failure "to disburse funds in accordance with a written commitment or agreement to make a mortgage loan." If the Department finds, either through a consumer complaint or otherwise, that a lender or a broker acting as a lender has failed to disburse funds in accordance with closing documents, which include legally binding executed agreements indicating a promise to pay and a creation of a security interest, a fine of five thousand dollars (\$5,000) per transaction may be imposed.

(20) Advertising. Any person who is required to be licensed or registered as a mortgage broker or mortgage lender who violates the regulations relative to advertising contained in O.C.G.A. § 7-1-1004.3 and 7-1-1016 or the advertising requirements of department Rule 80-11-1-.02 shall be subject to a fine of five hundred dollars (\$500) for each violation of law or rule.

(21) Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) shall be revocation of the license or registration and a five thousand dollars

(\$5,000) fine. Refusal shall be determined according to Department examination policies and procedures, but shall require at least two attempts to schedule an examination or investigation.

(22) Repealed. Reserved.

(23) Background Checks. Any licensee who fails to perform background checks on covered employees in accordance with the provisions of O.C.G.A. §7-1-1004~~(d), (e) and (f)~~ (h), (i), and (k) shall be subject to a fine of one thousand dollars (\$1,000) for each employee on whom the required background check was not conducted.

(24) Change in Officers. Any licensee who fails to notify the Department of a change in principals of the company without the proper approval of the Department in violation of O.C.G.A. §7-1-1006(e) shall be subject to a fine of five hundred dollars (\$500).

(25) Georgia Fair Lending Act. Any person who is required to be licensed or registered under O.C.G.A. Title 7, Article 13 as a mortgage broker or mortgage lender who violates any provision of Chapter 6A of Article 13, the Georgia Fair Lending Act, shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation and their license will be subject to revocation or suspension.

(26) Consumer Complaints. Any licensee or registrant who fails to respond to a consumer complaint or fails to respond to the Department within the time periods specified in the Department's correspondence to such person shall be subject to a fine of one thousand dollars (\$1,000) for each occurrence. Repeated failure to properly respond to consumer complaints may result in revocation of license.

(27) Failure to Perform Timely Background Checks. If the ten (10) day requirement for submission of background information to the proper law enforcement authorities is not met, the employer shall be subject to a one thousand dollars (\$1,000) fine.

Authority O.C.G.A. §7-1-61; §7-1-1012.

#### **80-11-4-.01 Initial Experience and Education Requirements; Continuing Education.**

(1) Subject to the exceptions below, any mortgage broker license issued, reinstated or renewed after July 1, 2000 to an applicant, shall be subject to the requirements for experience or education. Such requirements shall apply to natural person applicants, or if to other entities or persons, to the operating manager who administers the operations in this state (collectively, "applicant").

(2) Applicants for a new license or for reinstatement of a previous license shall elect and meet either the experience or the education requirements before a license will be issued or reinstated.

(3) Exception for certain licensees for initial education or experience requirements.

(a) Any mortgage broker license issued to an applicant prior to July 1, 2000, which license remains continuously valid without interruption until renewed on July 1, 2001, shall be subject to either one year of verifiable experience or applicant must meet the education requirements in this rule.

(b) Applicants for renewal eligible for this exception, in the case of a natural person, need only state on the application that the license was issued on or before July 1, 2000 and has remained continuously valid without interruption since July 1, 2000. In the case of other entities or persons, applicant must demonstrate that the current operating manager has completed either one year of experience, verified according to this rule, or the education requirements.

(4) Experience Requirements:

(a) Applicant must complete two (2) years of verifiable experience working full time for a licensed mortgage broker or lender.

(b) Experience shall consist of directly soliciting, processing, placing and negotiating mortgage loans for others.

(c) The following information must be submitted at the time of application or renewal by an applicant who wishes to qualify by using experience:

1. Letter on letterhead from previous or current employer certifying completion of two (2) years work experience directly soliciting, processing, placing, and negotiating mortgage loans for others. Telephone number of employer must be provided;

2. Copy of IRS form W-2 for the tax years covering the experience requirement;

3. Completed and signed IRS form 4506 which enables the Department to verify the W-2, and;

4. Other documents or information required by the Department necessary to verify completion of the experience requirement. Experience requirement may be verified by the Department directly with the employer and tax authorities.

(d) If applicant's experience is received from an employer not required to be a Georgia Residential Mortgage Act licensee, such applicant must also complete four (4) hours of education provided by an approved school in Georgia, which education specifically covers the Georgia Residential Mortgage Act and rules and regulations of the Department.

(5) Initial Education Requirements:

(a) An Applicant for a mortgage broker's license must complete a minimum of forty (40) course hours of prescribed courses from a Department or Nationwide Mortgage Licensing System and Registry (NMLSR) approved provider of mortgage training courses. ~~Courses will~~



~~deal with obtaining a basic understanding of technical mortgage terms, elements of the mortgage brokering process, federal law, applications and required documentation, and shall include a minimum of four (4) course hours on Georgia law, rules and regulations. At least one of the remaining thirty (36) hours shall be focused on fraud detection and prevention in the mortgage industry.~~ A mortgage broker that is also required to have a mortgage loan originator's license may apply the twenty (20) hours of required mortgage loan originator pre-licensing education towards its mortgage broker license.

(b) Course work taken pursuant to this rule shall pertain to basic technical mortgage terms, elements of the mortgage brokering process, federal law, applications and required documentation, and shall include a minimum of four (4) course hours on Georgia law, rules and regulations; fraud detection; and the prevention of fraud in the mortgage industry.

~~(b)~~ (c) Applicant must submit proof of completion of the required education courses in the form of a certificate of completion issued by a Department approved provider of mortgage education courses. This requirement may be verified by the Department directly with the provider. The Department will make a list of such providers available on its website.

(6) Experience requirements must have been completed within the three (3) calendar year period immediately prior to the date of approval of the license. Initial education requirements must have been completed within the one (1) calendar year period prior to the date of approval.

(7) Continuing Education. Applicants for renewal of a broker's license who are exempt from the mortgage loan originator's license requirements shall meet the following continuing education requirements set forth in subparts (a) through (i) of this rule. Mortgage broker/processor licensees who are also required to maintain a mortgage loan originator's license must meet the continuing education requirements set forth in Rule 80-11-5-04(1)(b).

(a) Applicant must complete on an annual basis and by October 31 each year a minimum of ~~twelve (12)~~ eight (8) hours of continuing education dealing with elements of the mortgage brokering process, federal law, federal rules and regulations, Georgia law, Georgia rules and regulations, applications and required documentation, fraud, ethics or other topics pertinent to the operation of a mortgage brokering business in Georgia. At least one (1) hour shall be concentrated on fraud detection and prevention. A mortgage broker that is also a mortgage loan originator may apply the eight (8) hours of annual continuing education required by O.C.G.A. § 7-1-1004(g) to the continuing education requirement contained in this rule.

(b) Except as provided in this rule, continuing education must be completed with a Department or NMLSR approved provider of mortgage education classes and be timely reported to the NMLSR pursuant to NMLSR requirements.

(c) Seminars, courses or classes sponsored and approved by mortgage-related state and federal regulatory agencies, a NMLSR approved provider, the National Association of Mortgage Brokers (NAMB), state and federal regulated lenders and their affiliates or professional associations, all of which must be recognized by the Department as proper providers of education requirements ("approved providers"). Requirements may be satisfied at monthly

association meetings, conventions, seminars or through electronic means provided the subject meets the requirements of this Rule. For purposes of continuing education, instructors and speakers at seminars, conventions or classes sponsored by approved providers will not be required to seek Department approval as approved providers of mortgage education classes. Education providers shall assign a certificate number to each attendee of a seminar, course or class. In state providers must keep lists of attendees for at least two (2) years.

(d) Each licensed broker must maintain a listing of the courses completed or seminars attended, the date attended, the name of the instructor or speaker, the name of the sponsoring association, the course agenda and the credit hours earned for each course or seminar. Credit hours may not be earned or approved in less than one (1) hour increments. Such information may be requested as part of the renewal application.

(e) The Department will not be required to verify that each applicant has completed the required Department continuing education hours prior to issuance of a renewal license. However, the Department may at any time and at its discretion select any number of renewal applications to verify that the continuing education requirements have been met. Verification of continuing education hours may be performed as a part of the examination process. Licensees must maintain documentation for five (5) years that verifies the continuing education hours attained. The Department may request proof of attendance or verification from the applicant, sponsor, instructor or speaker.

(f) The Department may at its discretion accept continuing education hours completed between ~~October 31~~ November 1 and December 31 of each year as part of the license renewal requirement. However, licensees/applicants that fail to attain at least ~~12~~ eight (8) continuing education hours by October 31 of each year will be subject to a one thousand dollars (\$1,000) fine.

(g) Upon submitting an application to renew a license, failure to complete ~~twelve (12)~~ eight (8) continuing education hours by October 31 together with failure to complete the hours by December 31 with payment of the one thousand dollars (\$1,000) fine shall result in inability to renew the license, or other administrative action.

(h) For purposes of continuing education requirements “applicant” shall mean an individual owner of the licensee, or a person designated and employed by the licensee as the primary supervisor or manager of the licensee’s mortgage business. The intent of the rule is that the continuing education for a mortgage broker’s license must be obtained by a person who directs the affairs of the mortgage business.

(i) Newly licensed brokers who obtain their license between January 1 and October 31 of any year will be required to have ~~twelve (12)~~ eight (8) hours of continuing education credits in order to qualify to renew their license for the next license renewal period. Newly licensed brokers who obtain their license between November 1 and December 31 of any year will be required to complete continuing education credits prior to license renewal. Provisions in subsection (f) and (g) of this rule also apply to such newly licensed brokers.

Authority O.C.G.A. § 7-1-1012; § 7-1-1004.

#### **80-11-4.02 Approved Schools.**

(1) A school or provider (“school”) that wishes to be approved by the department to offer courses eligible to satisfy the mortgage broker education requirement shall apply to the department for approval. Only approved schools may provide such courses.

(2) An approved school must offer credit hours in courses directly related to the mortgage broker process. A list of the required areas of coverage necessary to satisfy the education requirement will be published by the department and may be revised from time to time as the need demands.

(3) An approved school must issue a certificate of completion to each person attending, and must have standards for attendance and test taking and a reasonable method to determine attendance. The school must provide to the department a list of all persons successfully completing the required credit hours.

(4) All approved schools must have qualified instructors, meeting standards established by O.C.G.A. § 7-1-1003.7 and the department, which will be available to the school upon request.

(5) An approved school’s official must be available to the department to contact in order to verify completion of education.

(6) An approved school must allow access to Department personnel in order for the Department to perform a review and assessment of the curriculum, books and records, and instruction offered by the school or provider to licensees and/or applicants. Failure to allow such access will result in removal of the school as an approved educational provider.

Authority O.C.G.A. § 7-1-1012; §7-1-1003.7; § 7-1-1004.

#### **80-11-4.03 Licensing requirements; registrants; exemptions; term for bond.**

(1) The Department will take appropriate action against all persons found to be improperly engaging in mortgage brokerage or lending activities without a license or valid exemption. In accordance with O.C.G.A. § 7-1-1018(a), if proper evidence is provided to the Department within thirty (30) days of the date the Order is issued that shows the person had the proper license or was acting pursuant to a valid exemption at the time noted in the Order, the Order shall be rescinded by the Department.

(2) The exemption from licensing provided pursuant to O.C.G.A. §7-1-1001~~(44)~~ (14) to an employee of a licensee or exemptee applies only to natural persons who meet all of the following criteria:

(a) An employee must be employed by just one licensee or exemptee and work exclusively for that person;

(b) An employee may not solicit, process, or place loans for anyone else while claiming the exemption;

(c) An employee's procedures and activities must be supervised by the licensee or exemptee on a daily basis, and the licensee or exemptee is responsible for the actions of such employees. This requirement is intended to make it clear that employers control and are accountable for the actions of their employees; and

(d) An employee may not be paid or compensated for performance of mortgage activity as an independent contractor or on a 1099 basis, except as specifically provided for in paragraph (3) of this rule.

(3) The exemption from licensing provided pursuant to O.C.G.A. §7-1-1001~~(14)~~ (17) only applies to a natural person acting in the capacity as an independent contractor working under an exclusive written contract for a licensee that is a wholly owned subsidiary of a financial holding company or bank holding company, savings bank holding company, or thrift holding company, under conditions and limitations as set forth in O.C.G.A. §7-1-1001~~(14)~~(17) and applies only if all of the following criteria are met:

(a) The independent contractor may only work in the capacity of a mortgage broker and may only broker loans to the licensed subsidiary or its affiliates;

(b) The licensee must provide annually, or more often if required by the Department, a list of each of the independent contractors brokering loans for the licensee under this exemption. This list must be submitted electronically in a form prescribed by the Department. The licensee must certify at the time of submission that each independent contractor brokering loans for them under this exemption are working under a current Undertaking of Accountability, in a form prescribed by the Department;

(c) The surety bond required pursuant to O.C.G.A. §7-1-1001~~(14)~~(17) must be in full force and effect at all times, unless or until such time as the licensee is no longer licensed. In the event that the licensee is no longer licensed, all independent contractors brokering loans for the licensee as independent contractors under this exemption must cease all mortgage brokerage activity immediately upon termination of said license. In the event that the required surety bond coverage falls below the amounts required by O.C.G.A. §7-1-1001~~(14)~~(17), the licensee must immediately provide coverage sufficient to meet the requirements as set forth therein, or the license will be subject to revocation or suspension. Adequacy of bond coverage will be determined annually by the Department based on the list of independent contractors as provided by the licensee in Rule 80-11-4-.03(3)(b).

(4) Registrants shall complete all information as indicated on the Department's application. Registrants must submit financial information as provided in O.C.G.A. § 7-1-1003.2 and §7-1-

1010, are subject to books and records requirements as provided in O.C.G.A. §7-1-1009, and must submit an annual fee to the Department. Registrants must provide updated consumer contact information to the Department, and are responsible for resolving consumer complaints satisfactorily and in conformity with the Department's guidelines and timeframes. Fines will apply for failure to comply with any Georgia mortgage laws or rules.

(5) In addition to the requirements contained in O.C.G.A. §7-1-1003.2 for a bond, the bond requirement for a lender or broker license shall have a stated term of one year or more, and shall expire ~~on June 30~~ a minimum of twelve (12) months from the date of issuance, or such longer period as needed to reflect the term of the bond. The bond requirement is continuous in nature. A corporate surety or licensee that does not intend to renew a bond for a subsequent term shall notify the Department of such cancellation pursuant to O.C.G.A. § 7-1-1007(c) no later than ~~June 4~~ thirty (30) days prior to the expiration or cancellation date of the bond. Surety bonds provided to the Department are deemed to be records of the Department and will not be returned to licensees or to the entities by which they were issued.

Authority O.C.G.A. §7-1-61; § 7-1-1003.2; §7-1-1012.

#### **80-11-4-.05 Knowing Purchase, Sale or Transfer of Loan or Loan Application from Unlicensed Entity.**

(1) It is prohibited for any person to knowingly purchase, sell or transfer a mortgage loan or loan application to or from an unlicensed mortgage loan originator, mortgage lender or broker, unless that entity is exempt from licensing. It is expected that all persons who purchase loans use reasonable diligence to determine whether the entities they do business with are licensed. To that end, the department has provided various means to determine whether an entity is licensed.

(a) A list of current licensees is provided at the department's Internet website. It is updated ~~weekly~~ nightly with the exception of weekends and holidays.

(b) Also at the website is a list of all suspended or revoked licenses. It is updated weekly.

(c) The department responds to telephone inquiries from 8:00 a.m. to 4:30 p.m. each weekday (except holidays) and provides current information to callers. Written inquiries will also be received and responded to.

(2) Obtaining a copy of an entity's license shall not be sufficient evidence of a current license since suspension and revocation proceedings occur throughout the year.

(3) Failure to exercise reasonable diligence to determine whether an entity is licensed may result in a fine, a suspension or a revocation.

Authority O.C.G.A. § 7-1-1012; § 7-1-1002.

**80-11-4.06 Wholly Owned Subsidiaries of Lenders; Notification Statement; When Registration Required. Repealed and Reserved.**

~~(1) A wholly owned subsidiary of a lender that is a federally insured financial institution (no common stock or voting stock owned by other than a financial institution) is exempt from licensing under the Georgia Residential Mortgage Act, provided it keeps a current notification statement on file with the department.~~

~~(2) A notification statement shall be updated by the entity should any information on the most recently submitted notification statement change. Updated notification statements shall be submitted to the department by December 1 of each year. No fee is applicable.~~

~~(3) Should the information on the statement be incorrect and should the department discover that Georgia consumers cannot reach a representative or their complaints are not being resolved promptly and fairly, the subsidiary will be notified of their loss of exempt status and their subsequent classification as a registrant, subject to all of the applicable requirements, fees and fines.~~

Authority O.C.G.A. § 7-1-1012; § 7-1-1001; § 7-1-1003.4.

**80-11-4.09 Challenges to Information Entered into the Nationwide Mortgage Licensing System and Registry.**

A mortgage broker or lender licensee or registrant may challenge information entered by the Department into the Nationwide Mortgage Licensing System and Registry. All challenges must be sent to the Department in writing addressed to the attention of the Deputy Commissioner of Non-Depository Financial Institutions. Once received, the Department shall consider the merits of the challenge raised and provide the licensee or registrant with a written reply that shall be the agency's final decision in response thereto.

Authority O.C.G.A. § 7-1-1004.2

**CHAPTER 80-11-5**

**MORTGAGE LOAN ORIGINATOR LICENSURE AND OTHER REQUIREMENTS**

**80-11-5.01 Mortgage Loan Originator Licensure Requirements.**

(1) Unless exempt from licensure pursuant to O.C.G.A. § 7-1-1001, a mortgage loan originator may not engage in the business of mortgage loan origination without obtaining and

maintaining a current Georgia mortgage loan originator's license issued through the National Mortgage Licensing System and Registry (NMLSR).

(2)(a) Unless a mortgage loan originator is employed by an exempt entity, no mortgage loan originator may work in the state of Georgia without having proper sponsorship on record with the NMLSR by a licensed or registered Georgia mortgage broker or mortgage lender. For purposes of this Rule Chapter, "sponsorship" means the authorization for a mortgage loan originator to conduct business as an employee under and on behalf of a specific mortgage broker or mortgage lender's license or registration. Sponsorship must be initiated and maintained by the licensed or registered mortgage broker or mortgage lender employing a mortgage loan originator.

(b) Sponsorship must be accepted by the Department. Once established, a sponsorship can be removed by either the employing licensee or registrant or by the mortgage loan originator. It shall be the responsibility of every licensee or registrant to ensure that the status of a mortgage loan originator is correctly reflected at all times on the NMLSR.

(3) A mortgage loan originator shall have coverage under the surety bond of his or her licensed or registered mortgage broker or mortgage lender employer, or under a surety bond maintained by the loan originator.

(a) surety bond covering the mortgage loan originator shall have a stated term of one year or more and shall expire a minimum of twelve (12) months from the date of issuance. The bond requirement is continuous in nature.

(b) A mortgage loan originator operating under the bond of his or her mortgage licensee or registrant employer must be covered continuously under his or her employer's bond under his or her name of record under the NMLRS and ensure such coverage is in effect during the time that the mortgage loan originator is engaged in making Georgia mortgage loans for that employer.

(c) A mortgage loan originator required to obtain his or her own surety bond coverage shall obtain a bond in the amount of at least \$10,000 for mortgage loan originators that originate between \$1 dollar and \$10 million dollars annually, or a bond in the amount of at least \$15,000 for mortgage loan originators that originate greater than \$10 million dollars annually. The bond obtained by a mortgage loan originator must be provided to the Department in a form acceptable to the agency. All other provisions concerning surety bond coverage maintained by a mortgage loan originator's employer must be met by mortgage loan originators maintaining their own coverage.

(d) Surety bonds provided to the Department are deemed to be records of the Department and will not be released or returned to licensees or to the entities by which they were issued.

(4) Mortgage loan originator bond coverage shall not be canceled by either the employing licensed or registered mortgage broker or mortgage lender, the mortgage loan originator licensee or the corporate surety except upon notice to the Department by registered or certified mail or statutory overnight delivery with return receipt requested. The cancellation shall not be effective less than thirty (30) days after receipt by the Department of such notice.

Authority O.C.G.A. § 7-1-1001.1; § 7-1-1002; § 7-1-1003.2; and § 7-1-1004.

**80-11-5-.02 Books and Records Requirements; Examinations**

(1) The Department may examine the mortgage related books and records of any licensed mortgage loan originator as specified in O.C.G.A. § 7-1-1009.

(2) Any person who is acting as a mortgage loan originator and is required to be licensed shall maintain a journal of mortgage loan transactions, which shall include, at a minimum, the following information:

(a) Full name of proposed borrower and all co-borrowers;

(b) Date the mortgage loan originator took application for the mortgage loan;

(c) Name and the unique identifier or Federal Regulatory Number of the mortgage licensee or registrant sponsoring the loan originator;

(d) Disposition of the mortgage loan application and date of disposition. The journal shall indicate the result of the loan transaction. The disposition of the application shall be categorized as one of the following: loan closed, loan denied, application withdrawn, application in process or other (explanation to be provided);

(e) The journal shall be kept current, updated no less frequently than every seven (7) days. The failure to initiate an entry to the journal within seven (7) business days from the date of the occurrence of the event required to be recorded in the journal shall be deemed a failure to keep the journal current.

(f) Failure to maintain the mortgage loan journal or to keep the journal current (incidental and isolated clerical errors or omissions shall not be considered a violation) may be grounds for suspension or revocation of the license or other appropriate administrative action and will subject the licensee to fines in accordance with regulations prescribed by the department.

(3) All mortgage loan originators who are required to be licensed under Article 13 of Title 7 of the O.C.G.A. and maintain their own surety bond coverage must keep copies of their bonds and also provide copies to their sponsoring/employing mortgage brokers or mortgage lenders.

(4) All books and records and accounts required by this rule shall be maintained by a mortgage loan originator for a period of five (5) years.

Authority O.C.G.A. § 7-1-1009.



### **80-11-5-.03 Licensed Location.**

All licensed mortgage loan originators must maintain an office of record with the Department. If the mortgage loan originator is not domiciled in Georgia, then the main office location of the sponsoring/employing licensee or registrant shall serve as the official employment address of the loan originator. Those licensed mortgage loan originators domiciled within Georgia must reflect the office from which they are supervised by their employer, either the main office or an approved branch location.

Authority O.C.G.A. § 7-1-1003.

### **80-11-5-.04 Renewals.**

(1) Mortgage loan originator licenses shall expire on December 31st of each calendar year. A mortgage loan originator must meet the following requirements in order to have his or her license renewed:

(a) A mortgage loan originator must continue to meet the minimum standards for license issuance.

(b) A loan originator must satisfy the continuing education requirements of O.C.G.A. § 7-1-1004(g). The applicant must obtain on an annual basis eight (8) hours of approved continuing education in mortgage courses from an NMLSR approved provider. Of these eight (8) hours, seven (7) hours must be obtained in course work addressing the subjects identified in O.C.G.A. § 7-1-1004 (g)(1), and at least one (1) hour of continuing education must be obtained in coursework addressing the Georgia Residential Mortgage Act, specifically any changes made to the statute and its corresponding regulations.

(c) Courses taken to meet the approved continuing education requirements of the NMLSR for any state shall be accepted as credit towards continuing education requirements in Georgia, with the exception that one (1) hour of the required courses must cover laws and regulations related to Georgia mortgage licensure, not that of another state.

(d) Continuing education credit hours must be obtained annually between November 1 and October 31 prior to the next November 1 license renewal date. The Department, in its discretion, may accept continuing education hours completed between November 1 and December 31 of a year as part of the license renewal requirement for the then current license renewal. Licensees/applicants that fail to obtain by October 31 of a year at least eight (8) continuing education hours will be subject to a one thousand dollar (\$1,000) fine.

(e) Upon submitting an application to renew a license, failure to document to the Department's satisfaction proof of completion of eight (8) continuing education hours by October 31 along with the failure to obtain and document proof of completion of these hours by

December 31 with payment of the one thousand dollar (\$1,000) fine shall result in the expiration of the mortgage loan originator's license.

(f) Continuing education credits are only valid in the year in which the courses are taken. Credits earned during November 1 through December 31 will be excluded from consideration for continuing education credit hours earned for the subsequent renewal period. When continuing education hours are obtained by a mortgage loan originator, only credit hours obtained from January 1 to October 31 shall be considered for purposes of meeting the eight (8) hours of continuing education required in the subsequent renewal period.

(2) A mortgage loan originator licensed on or after January 1, 2010, whose license has not been maintained for a period of up to five (5) years shall provide proof of completion of the continuing education requirements for the last year in which the license was held in order to reinstate it. Should reinstatement of an expired license be sought for a license that has not been maintained for a period of five (5) years or more, such reinstatement application will require that the applicant again meet the testing requirements set forth in O.C.G.A. § 7-1-1004 (e) and (f). If a person has worked as a registered loan originator at any time during the lapsed license period, the period of time the registered mortgage loan officer was employed in this capacity shall not count toward the calculation of the time period for the continuing education and testing requirements of this paragraph.

Authority O.C.G.A. § 7-1-1004(e)(4); § 7-1-1004.2; § 7-1-1005;

#### **80-11-5-.05 Administrative Fines.**

(1) The Department establishes the following fines and penalties for violation by mortgage loan originators of the Georgia Residential Mortgage Act or its rules. The Department, in its sole discretion, may waive or modify any fine based upon the gravity of the violation, history of previous violations, and such other facts and circumstances as have contributed to the violation.

(2) All fines levied by the Department are due within thirty (30) days from date of assessment and must be paid prior to renewal of the annual license or registration, reinstatement of a license or registration, or reapplication for a license or registration, or any other activity requiring Departmental approval.

(3) All fines collected by the Department shall be paid into the state treasury to the credit of the general fund.

(4) The following fines shall be assessed for violations of the Georgia Residential Mortgage Act and Department rules:

(a) Dealing with Unlicensed Persons. A mortgage loan originator that purchases, sells, places for processing or transfers (or performs activities which are the equivalent thereof) a mortgage loan or loan application to or from a person who is required to be but is not duly

licensed under GRMA shall be subject to a fine of one thousand dollars (\$1,000) per transaction and his or her license shall be subject to suspension or revocation.

(b) Unapproved Location. A mortgage loan originator that operates from a location in Georgia other than a required approved location on record with the Department shall be subject to a fine of five hundred dollars (\$500) per unapproved location operated and his or her license may be subject to revocation or suspension.

(c) Doing Business Without a License or in Violation of Administrative Order. Any person who acts as a mortgage loan originator prior to receiving a current license or registration required under GRMA, or during the time a suspension, revocation or applicable cease and desist order is in effect, shall be subject to a fine of one thousand dollars (\$1,000) per transaction and the mortgage loan originator's application will be subject to denial or his or her license or registration will be subject to revocation or suspension.

(d) Books and Records Violations. If the Department, in the course of an examination or investigation, finds that a mortgage loan originator licensee or registrant has failed to maintain his or her books and records according to the requirements of Rule 80-11-5-.04, such licensee or registrant may be subject to a fine of one thousand dollars (\$1,000) for each violation of a books and records found to occur.

(e) Prohibited Acts. Any person who is required to be licensed under O.C.G.A. Title 7, Article 13 as a mortgage loan originator who violates the provisions of O.C.G.A. §7-1-1013 shall be subject to a fine of one thousand dollars (\$1,000) per violation or transaction that is in violation and his or her license shall be subject to suspension or revocation.

(f) Education and Experience Requirements. A mortgage loan originator subject to the experience and education requirements who fails to meet such requirements shall be fined one thousand dollars (\$1,000) for conducting mortgage business without meeting licensing standards, and his or her license will be subject to revocation or suspension.

(g) Advertising. A mortgage loan originator that is required to be licensed who violates the regulations relative to advertising contained in O.C.G.A. §§ 7-1-1004.3 and 7-1-1016 or the advertising requirements of the Department shall be subject to a fine of five hundred dollars (\$500) for each violation of law or rule.

(h) Failure to Submit to Examination or Investigation. The penalty for refusal to permit an investigation or examination of books, accounts and records (after a reasonable request by the Department) shall be revocation of the license or registration and a five thousand dollars (\$5,000) fine. Refusal shall be determined according to Department examination policies and procedures, but shall require at least two attempts to schedule an examination or investigation.

**Authority O.C.G.A. § 7-1-1018(g).**

**80-11-5-.06 Administrative Actions; Nationwide Mortgage Licensing System and Registry Information Challenges.**

(1) Final administrative actions taken against mortgage loan originators shall be considered public information and may be disseminated through the Nationwide Mortgage Licensing System and Registry (NMLSR) or by the Department.

(2) A mortgage loan originator may challenge information entered by the Department into the NMLSR. All challenges must be sent to the Department in writing addressed to the attention of the Deputy Commissioner of Non-Depository Financial Institutions. Once received, the Department shall consider the merits of the challenge raised and provide the mortgage loan originator with a written reply that shall be the agency's final decision in response thereto.

Authority O.C.G.A. § 7-1-61; § 7-1-1003.6; § 7-1-1004.2; § 7-1-1012.